TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]96

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 29, 1920.

(27,784)

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SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 1, 1921.

1 Court of Claims.

No. 33081.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

vs.

THE UNITED STATES.

I. *History of Proceedings.*

On June 28, 1915, the claimant filed its original petition.

On May 27, 1918, the defendants filed a motion for leave to withdraw the general traverse and to require the plaintiff to make its petition more definite and certain. This motion was allowed in open court on May 27, 1918.

On August 6, 1918, by leave of court, the plaintiff filed an amendment to the petition.

On October 2, 1918, the defendants filed a demurrer to the petition as amended.

On December 23, 1918, by leave of court, the claimant filed a second amendment to the petition.

On January 14, 1919, the demurrer was argued and submitted by Mr. J. Robert Anderson and Mr. Joseph Stewart, for the defendants, and by Mr. S. S. Ashbaugh, for the plaintiffs.

On February 3, 1919, the court overruled, without prejudice, the defendant's demurrer.

On February 28, 1920, the claimant filed a motion for leave to amend the petition by interlineation. This motion was allowed by the court March 1, 1920, and said interlineations made.

The petition, as amended by the various motions, now reads as follows:

2 II. *Petition as Amended by Various Motions.*

Petition.

(Amended by Interlineation, Filed by Leave of Court, March 1, 1920.)

To the Honorable the Chief Justice and the Associate Judges of the Court of Claims:

Comes now your petitioner, The New York, New Haven and Hartford Railroad Company, and for cause of action alleges:

1st. Your petitioner is a corporation duly organized and existing under and by virtue of the laws of the States of Connecticut, Rhode Island and Massachusetts, and at the times hereinafter mentioned

was and now is operating its trains on its own and leased lines through the States of New York, Connecticut, Rhode Island and Massachusetts, doing business as a common carier of freight, passengers and express, and under the laws of the United States and the Rules and Regulations of the Post Office Department was an agency of the Government of the United States, and in pursuance of certain contracts entered into, also at said times engaged in the transportation of the mails for the United States.

2nd. That on or about the 24th day of October, 1914, the defendants by their officers and agents, presented for shipment and demanded transportation from Philadelphia, Pennsylvania, to Boston, Massachusetts, of five million dollars in gold coin of the United States, and that in accordance with said presentation and demand said gold coin in bulk was accepted and transported by the Pennsylvania Railroad Company from Philadelphia, Pennsylvania, to the Terminal of the Pennsylvania Company at New York, and thence by the Postal Transfer Company to the Grand Central Terminal in the city of New York, that the same was then transported by your petitioner from the Grand Central Terminal in the city of New York to the railroad station in Springfield, Massachusetts, and that the same was then in turn transmitted by the Boston and Albany Railroad Company from said station in Springfield, Massachusetts
to the city of Boston, Massachusetts. The said shipments
3 were made at the special instance and request of the defendants, and for their sole use and benefit.

3rd. That said five million dollars in gold coin had been placed and were contained in one thousand cloth or canvas bags, that said bags were tied, sewed and sealed up so as to prevent any and all inspection of the contents thereof, that each bag contained five thousand dollars, was stamped with the ordinary postage stamps of the United States, but not in the distinctive postage stamps named in the statute, that each bag weighed 18.75 pounds, making in all 18,400 pounds, or 9.2 tons. That for the purpose of convenience in shipment the one thousand bags of gold coin were placed in 167 mail sacks or pouches, and were then transported in the Railway Post Office cars over the lines of the cariers above named.

4th. That said bags of gold coin were not so wrapped and sealed, or so packed within the weight limit given by law, or so stamped with postage stamps of the United States, as to be admitted for transportation as mail of the first class.

Nor were said bags of gold coin, or any or them, open for convenient inspection as provided by law, nor were they, or any of them, packed within the weight limit fixed by the statute, so as to be admitted for transportation as mail of the fourth class.

Nor were said bags of gold coin, or any of them, when presented for transportation, mail matter of any kind or class whatsoever; nor were they, or any of them, when so prepared as above described, nor could they have been, shipped as mail of the United States of any class; nor were they shipped as freight by your petitioner as a common carier.

5th. That at the same time and as a part of the same transaction, the defendants demanded that seven persons should be carried as guards to protect said gold coin, and your petitioner in accordance therewith transported seven men as such guards from said Grand Central Terminal in the city of New York to said station in Springfield, Massachusetts, in addition to said shipment of 9.2 tons of gold coin.

4 6th. That your petitioner had no contract or agreement as to the price or the value of the services for said shipment of gold coin, or *that* transportation of said men as guards, and no payment or settlement whatsoever has been made therefor.

7th. That for the shipment of said gold coin from New York to Springfield as aforesaid the reasonable and the legally established value of the services is the sum of $5,000, the same being your petitioner's proper proportion of the through joint rate, which joint rate is shown by the tariffs for the shipment of express matter on file with the Interstate Commerce Commission, allowed to the line from New York to Springfield, and the passenger fares of said seven men from New York to Springfield aforesaid is the sum of $2.95 each or $20.65, being your petitioner's proportion as is also shown by the tariffs on file, making a total sum of $5,020.65 due your petitioner from said defendants, no part of which, though often demanded, has been paid. Your petitioner further alleges that it has made no assignment or transfer of said claim or of any part thereof, or interest therein.

Wherefore, Your petitioner prays judgment against the United States in the sum of $5,020.65.

THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY.
By EDWARD G. BUCKLAND,
Its Vice President.

STATE OF CONNECTICUT,
County of New Haven, ss:

Edward G. Buckland, being first duly sworn, deposes and says that he is one of the Vice Presidents and the General Counsel of the New York, New Haven and Hartford Railroad Company, the claimant above named; that he has read the foregoing petition and knows the contents thereof, and that the facts therein stated are true as he verily believes.

EDWARD G. BUCKLAND.

Subscribed and sworn to before me this 14th day of June, 1915.

HARRY E. FRIEND.
Notary Public.

S. S. ASHBAUGH,
Attorney for Claimant.

EDWARD G. BUCKLAND,
General Counsel.

5 *Amendment to the Petition.*

(Filed by Leave of Court Aug. 6, 1918.)

The contract referred to in the first paragraph of the petition was embodied in the distance circular sent out by the Postmaster General for the quadrennial period beginning July 1, 1913, and ending June 30, 1914; a copy of which is hereto attached by order of court, marked Exhibit A, and made a part hereof.

EXHIBIT A.

Number of Route —.

Division of Railway Adjustments,

Post Office Department,

Second Assistant Postmaster General.

Washington.

Read carefully.

Please have this Railroad Distance Circular carefully and properly filled, in accordance with the following instructions, and returned to this office as soon as possible.

In column 1 state the distance from station to next station, junction, or point where mails are put on or off trains.

In column 2 state the names of all railroad stations, junctions, and points where mails are put on or off trains, in the order in which they are reached on outward trips, and designate the stations where your company has no agent or other employee by an asterisk (*).

In column 3 state the name of each post office or postal station which receives mail directly from this route; the same to be opposite the name of the point from which it is supplied, if possible.

In column 4 state the distance by the shortest route open to and used by the public in traveling between the nearest door of the baggage room and the nearest door of the post-office build- where the receipt and delivery of mail is practicable.

In column 5 state the distance between the post office or postal station and the point on the railroad track nearest to such post office or postal station.

State fractions of a mile in hundredths. This is important.

If trains on any part of this route be operated over the tracks of another railroad company, or if they be operated over the tracks of your own company over which another railroad mail route has been authorized, state the points between which such trains are so operated and whether the tracks used are tracks of another company or of your company, using for that purpurpose the blank spaces in this form provided therefor.

If there be any spur tracks from the main line of this route, show location and state the length of such spur tracks, separately. A

"spur" is understood to be a short track, not a branch line.

Have the statement verified by the Chief Engineer or other competent officer of the road, the acceptance on second page signed by the President of Manager of the company, and the seal of the company impressed on the circular. With the distance circular send two copies of latest working schedule showing the trains operated over this route.

Failure to return this circular promptly may cause corresponding delay in adjusting compensation on the route.

____ ____,

Second Assistant Postmaster General.

6 The company named below agrees to accept and perform mail service upon the conditions prescribed by law and the regulations of the Department applicable to railroad mail service.

____ ____,

President or General Manager.

Impress seal here.

I hereby certify that the statement of distances contained herein is correct.

____ ____,

Chief Engineer.

The Company named below agrees to accept and perform mail service upon the conditions now prescribed by law and the existing regulations of the department, but only because its failure to perform this service would result in an intolerable hardship to the territory which it serves; otherwise, the company would decline to perform such service because of the burden of loss, admitted by the Post Office Department, which such service compels it to bear.

It protests that the pay for such service is inadequate and unreasonably low, and that while according to judicial decision it is not by law compelled to perform the service, nevertheless, it is in fact so compelled. It reserves the right to claim and recover a reasonable compensation for any additional service which it may agree to perform.

This agreement, and acceptance is upon the further condition that this company does not recognize as valid or binding, Postmaster General's Order No. 165, dated March 2, 1907, or said Order as amended by Postmaster General's Order No. 412, dated June 7, 1907.

This company cannot accept as full compensation for services rendered, the amount fixed according to the method of computation of average weight prescribed by such order. It reserves the right to insist upon payment according to the method of computing the average weight applied by the Department prior to the issuance of Order No. 165, issued by the Postmaster General, March 2, 1907.

This company reserves the right to terminate this acceptance and to withdraw from the performance of service upon not less than three months' written notice to the Post Office Department.

This company also reserves the right to refuse to stop express trains for the purpose of receiving or discharging parcel post or other

mail which is too heavy or bulky to be thrown off or received from mail cranes while the train is in motion.

Care should be exercised to state the title of the company actually operating the railroad, in the blank space below, as the company therein named will be accepted as being entitled to the compensation for the service, and to prevent any misunderstanding as to title the seal of the company should be impressed.

Title: —— Rail— Co., State of ——, Route No. —, from —— to ——. Lap service: From —— to ——, over tracks of —— Rail— Co., from —— to ——, over tracks of —— Rail— Co., from —— to ——, over tracks of —— Rail— Co.

7 1. Distance from Station to next Station, Junction, or point where mails are put on or off tarins. Miles — 100ths of a mile.

2. List of Stations, Junctions, or Points Where Mails are put on or off Trains.—Designate Stations where the Company has no agent or other representative thus: *

3. Official name of Post Office or Postal Station receiving or forwarding mail by this route.

4. Distance from Station to Post Office or Postal Station. Miles — 100ths of a mile.

5. Distance from Post Office or Postal Station to nearest point on Railroad Track. Miles — 100ths of a mile.

Notice to Company of Adjustment of Pay.

Post Office Department,

Second Assistant Postmaster General.

Washington, November 13, 1913.

Mr. B. Campbell, Vice President
New York, New Haven & Hartford R. R. Co.,
New Haven, Conn.

SIR:

The compensation for the transportation of mails, etc., on Route No. 106,004, between New York, N. Y., and Boston, Mass., has been fixed from July 1, 1913, to June 30th, 1917 (unless otherwise ordered), under acts of March 3, 1873, July 12, 1876, June 17, 1878, March 3, 1905, March 2, 1907, and May 12, 1910, upon returns showing the amount and character of the service for a number of successive working days, not less than ninety, commencing September 4, 1912, at the rate of $344,231.42 per annum, being $1,502.21 per mile for 229.15 miles; and for R. P. O. car service at the rate of $90,067.65 per annum, being $585.00 per mile for 73.95 miles, New York, N. Y., and Cedar Hill (n.o.) Conn., for 10 lines of 60-ft., 2 lines 50-ft., and 3 lines 55 ft., cars; $300.00 per mile for 145.59 miles, Cedar Mill (n.o.) and Readville, Mass., for 6 lines and one half line of 60-ft., and one line of 55-ft., cars; $520.00 per mile for 9.63 miles, Readville and Boston, Mass., for 7 lines of 60-ft., and 1 line of 55-ft. cars.

This adjustment is subject to future orders and to fines and deductions, and is based on a service of not less than six round trips per week.

Attention is called to my letter of June 30, 1913, with reference to the application of order N-. 412 of the Postmaster General, and to the fact that the amount of compensation for the transportation of the mails herein stated is fixed after making such application, and you are again informed that this is all the compensation that will be paid for such service on the route named.

Respectfully,

(Signed) JOSEPH STEWART,
Second Assistant Postmaster General.

2508.

Amendment to Petition.

(Filed by Leave of Court December 23, 1918.)

The N. Y., N. H. & H. R. R. Co.

New Haven, Conn., August 15th, 1913.

To the Post Office Department, Washington, D. C.

GENTLEMEN:

This company respectfully protests against assuming the additional burden imposed upon it by your order effective this date increasing the weight of parcel post.

This company is desirous, as always, of carrying the mail, but must insist in justice to its shippers, passengers and stockholders, that the Government shall assume its fair share of the burden imposed by this additional traffic.

It therefore, reserves the right to decline to carry the additional mail matter resulting from the said order without additional compensation being provided and paid for the same.

Yours truly,

(Signed) C. S. MELLEN,
President.

Post Office Department,

Second Assistant Postmaster General.

Washington, August 22, 1913.

Mr. C. S. Mellen, President
The New York, New Haven & Hartford R. R. Co.,
New Haven, Conn.

SIR:

I am in receipt of your letter of the 15th instant addressed to this Department regarding the carriage of parcel post mail. * * *

The law requires that every railway company carrying the mail shall carry on any train which may run over its road, and without

extra charge therefor, all mailable matter directed to be carried thereon by the Postmaster General. The Department makes no distinction between parcel post mail and other classes of mail, and I trust that your service heretofore furnished will continue without interruption.

Very respectfully,

(Signed) JOSEPH STEWART,
Second Assistant Postmaster General.

9 III. *General Traverse.*

Filed June 7, 1920

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

FRANK DAVIS, JR.,
Assistant Attorney General.

IV. *Argument and Submission of Case.*

On June 7, 1920, this case was argued and submitted by Mr. S. S. Ashbaugh, for the claimant, and by Mr. J. Robert Anderson, for the defendants.

10 V. *Findings of Fact and Conclusion of Law.*

Entered June 14, 1920.

This case having been heard by the Court of Claims, the court upon the evidence makes the following

Findings of Fact.

I.

The plaintiff is a corporation duly incorporated under the laws of the States of Connecticut, Rhode Island, and Massachusetts and is engaged, among other business, in operating mail trains on its own and leased lines through the States of New York, Connecticut, Rhode Island, and Massachusetts.

II.

As the four-year term for which readjustment had been made on route No. 106004, from New York City to Boston, would expire on June 30, 1913, the Postmaster General, on August 23, 1912, sent the plaintiff a Post Office Department distance circular, with a request to fill out certain blanks and return the same to the Second Assistant Postmaster General. As submitted, the circular contained a clause that "The company named below agrees to accept and perform mail

service upon the conditions prescribed by law and the regulations of the department applicable to Railroad Mail Service."

The purpose in sending this circular was to obtain data to be used in connection with the weighing of the mails on the routes named in plaintiff's petition, to adjust the pay for mail service from July 1, 1913, as provided by the several acts of Congress.

The plaintiff returned to the Second Assistant Postmaster General the completed distance circular with an agreement clause substituted for that contained in the original form, which reads:

The company named below agrees to accept and perform mail service upon the conditions now prescribed by law and the existing regulations of the department, but only because its failure to perform this service would result in an intolerable hardship to the territory which it serves; otherwise, the company would decline to perform such service because of the burden of loss, admitted by the Post Office Department, which such service compels it to bear.

On October 9, 1913, the Second Assistant Postmaster General, in a letter to the plaintiff, commenting on the above-substituted agreement clause, said that the company, as in the past, would be subject to all postal laws, regulations, and orders of the Postmaster General which are now or may become applicable during the term of its service and to the customs and practices of the Railroad Mail Service, "and that no other or further compensation for such service performed will be paid than that fixed by the orders of the Postmaster General."

III.

The Postmaster General caused the mails to be weighed on route No. 106004, as required by law, and on November 13, 1913, fixed the amount and rate of compensation for the term beginning July 1, 1913, as follows:

11 The compensation for the transportation of mails, etc., on route No. 106004 between New York, N. Y., and Boston, Mass., was fixed from July 1, 1913, to June 30, 1917 (unless otherwise ordered), under acts of March 3, 1873, July 12, 1876, June 17, 1878, March 3, 1905, March 2, 1907, and May 12, 1910, upon returns showing the amount and character of the service for a number of successive working days, not less than ninety, commencing September 4, 1912, at the rate of $344,231.42 per annum, being $1,502.21 per mile for 229.15 miles; and for R. P. O. car service at the rate of $90,007.65 per annum, being $585.00 per mile for 73.93 miles, New York, N. Y., and Cedar Hill (n. o.), Conn., for 10 lines of 60-foot, 2 lines of 50 foot, and 3 lines of 55-foot cars; $300.00 per mile for 145.59 miles, Cedar Hill (n. o.) and Readville, Mass., for 6 lines and one-half line of 60-foot, and 1 line of 55-foot cars; $320.00 per mile for 9.63 miles, Readville and Boston, Mass., for 7 lines of 60-foot and 1 line of 55-foot cars.

This adjustment was subject to future orders and to fines and deductions, and was based on a service of not less than six round trips per week.

Attention was called to the Second Assistant Postmaster General's letter of June 30, 1913, with reference to the application of Order No. 412 of the Postmaster General, and to the fact that the amount of compensation for the transportation of the mails herein stated was fixed after making such application, and plaintiff was again informed that this was all the compensation that would be paid for such service on the route named.

On the same day, November 13, 1913, notice of such adjustment of compensation was sent to the plaintiff.

IV.

As the four-year term for which adjustment had been made on route No. 106005 of the plaintiff would also expire on June 30, 1913, the Postmaster General, on August 23, 1912, sent to the plaintiff a like distance circular with like request and purpose as that referred to hereinbefore concerning route No. 106004. The plaintiff returned the same with the information called for and with the same substituted agreement clause aboved referred to. To this the Second Assistant Postmaster General replied by letter in the same terms and language as in the case of route No. 106004. Theretofore the mails were weighed on route No. 106005 as on route 106004, and the Postmaster General, on October 10, 1913, fixed the amount and rates of compensation allowed on this route, due notice of which was given the plaintiff as on route No. 106004.

The compensation fixed was as follows:

The compensation for the transportation of mails, etc., on route No. 106005, between Cedar Hill (n. o.), Conn., and Springfield, Mass., was fixed from July 1, 1913, to June 30, 1917 (unless otherwise ordered), under acts of March 3, 1873, July 12, 1876, June 17, 1878, March 3, 1905, March 2, 1907, and May 12, 1910, upon returns showing the amount and character of the service for a number of successive working days, not less than 90, commencing September 4, 1912, at the rate of $51,900.79 per annum, being $858.29 per mile for 60.47 miles; and for R. P. O. car service at the rate of $16,024.55 per annum, being $265.00 per mile for 60.47 miles, Cedar Hill (n. o.), Conn., and Springfield, Mass., for 3 lines of 60-foot, 2 lines of 55-foot, and 2 lines of 50-foot cars.

This adjustment was subject to future orders and to fines and deductions, and was based on a service of not less than six round trips per week.

Attention was called to the Second Assistant Postmaster General's letter of June 30, 1913, with reference to the application of Order No. 412 of the Postmaster General, and to the fact that the amount of compensation for the transportation of the mails herein stated was fixed after making such application, and plaintiff was again informed that this was all the compensation that would be paid for such service on the route named.

On the same day, October 10, 1913, notice of such adjustment of compensation was sent to the plaintiff.

12

V.

Thereafter, the plaintiff continued to carry the mails under said adjustments without further objection or protest.

VI.

Section 8 of the act of August 24, 1912 (37 Stat., 539, 557), provided:

SEC. 8. That hereafter fourth-class mail matter shall embrace all other matter, including farm and factory products, not now embraced by law in either the first, second, or third class, not exceeding eleven pounds in weight, nor greater in size than seventy-two inches in length and girth combined, nor in form or kind likely to injure the person of any postal employee or damage the mail equipment or other mail matter and not of a character perishable within a period reasonably required for transportation and delivery.

The act further provided for carrying out the purposes of section 8, the United States and its several Territories and possessions, except the Philippine Islands, should be divided into eight postal zones, which, by direction of the Postmaster General, were accordingly established as therein provided.

The act of March 4, 1913 (37 Stat., 791, 797), provided:

That on account of the increased weight of mails resulting from the enactment of section eight of the act of August twenty-fourth, nineteen hundred and twelve, making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after July first, nineteen hundred and thirteen, for the remainder of the contract terms, not exceeding five per centum thereof per annum, excepting upon routes weighed sinced January first, nineteen hundred and thirteen, and to be readjusted from July first, nineteen hundred and thirteen, until otherwise provided by law.

The Postmaster General, on July 25, 1913, reclassified and reformed the weight limit of parcel post packages for transportation in the first and second zones by increasing the weight limit from 11 to 20 pounds, and on December 18, 1913, by increasing the weight limit in all zones from 11 to 20 pounds, and in the first and second zones by increasing the weight limit from 20 to 50 pounds. On July 25, 1913, the rates of postage on parcels exceeding 4 ounces in weight for delivery in the first and second zones were fixed at 5 cents for the first pound and 1 cent for each additional pound or fraction thereof.

On December 6, 1913, for delivery in the third zone the rates of postage were fixed at six cents for the first pound and two cents for each additional pound or fraction thereof, for the fourth zone at seven cents for the first pound and four cents for each additional pound or fraction thereof, for the fifth zone at eight cents for the first

pound and six cents for each additional pound or fraction thereof, and for the sixth zone at nine cents for the first pound and eight cents for each additional pound or fraction thereof.

The plaintiff, on August 15, 1913, in a letter to the Post Office Department, protested against the increase in weight of parcel-post packages and reserved the right to decline to carry the additional mail matter without additional compensation.

On August 22, 1913, the Second Assistant Postmaster General replied that the plaintiff, under the law, if he continued to carry the mails, was not entitled to additional compensation.

13 VII.

On November 14, 1913, the Postmaster General increased the plaintiff's compensation for carrying the mails as follows:

In accordance with the act of March 4, 1913, making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, from July 1, 1913, compensation for the transportation of mails on route 106005 was increased at the rate of $2,595.03 per annum, being $42.9144 per mile for 60.47 miles, and 5 per cent increase in compensation fixed by readjustment from July 1, 1913, based on weighing from September 4 to December 17, 1912, inclusive.

The total compensation was thereafter to be at the rate of $54,495.82 per annum, being $901.2043 per mile for 60.47 miles.

This adjustment was subject to future orders and to fines and deductions, and was based on a service of not less than six round trips per week.

This increase was based upon an ascertainment by an estimate of the increased weight of mails resulting from the establishment of the Parcel Post System.

On the same day, November 14, 1913, the plaintiff was notified of this increase in its compensation.

VIII.

On December 4, 1913, the Postmaster General again increased the plaintiff's compensation for carrying the mails, as follows:

In accordance with the act of March 4, 1913, making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, from July 1, 1913, compensation for the transportation of mails on route 106004 was increased at the rate of $17,211.57 per annum, being $75.1105 per mile for 229.15 miles, and 5 per cent increase in compensation fixed by readjustment from July 1, 1913, based on weighing from September 4 to December 17, 1912, inclusive.

The total compensation was thereafter to be at the rate of $361,442.99 per annum, being $1,577.3205 per mile for 229.15 miles.

This adjustment was subject to future orders and to fines and deductions, and was based on a service of not less than six round trips per week.

This increase was based upon an ascertainment by an estimate of the increased weight of mails resulting from the establishment of the Parcel Post System.

On the same day, December 4, 1913, the plaintiff was notified of this increase in its compensation.

IX.

On October 23, 1914, the Post Office Department received from the Treasury Department at Philadelphia, Pa., at the United States mint, 1,000 bags each weighing 18¾ pounds and said to contain $5,000 each in gold, for transmission by United States mails from Philadelphia, Pa., to Boston, Mass.

Said bags were properly sealed at the United States mint at Philadelphia before delivery to the postal authorities. They were placed in 167 mail pouches, which were locked with rotary mail locks and labeled "Boston, Mass." The Treasury Department prepaid the postage required for fourth-class mail matter at parcel-post rates, amounting to $420.

These bags were received and treated by the Post Office Department as mail matter of the fourth class, which was thereupon transported from Philadelphia to New York, N. Y., on New York and Pittsburgh R. P. O. train No. 34, of the Pennsylvania Railroad Company, in storage mail car of said train, accompanied by five railway mail officials and postal clerks, all of whom held the regular
14 travel commissions for transportation over the Pennsylvania Railroad between Philadelphia and New York.

A Mail-storage car is a car in which through mails inclosed in pouches and sacks are deposited and transported between stated points, and in which no distribution of the mails is performed, and may be either a car specially equipped with stanchions for the separation of the made-up mails according to destinations or an ordinary baggage car.

X.

On arrival at New York the 167 pouches were placed in a vault at the subtreasury, subject to the call of the chief clerk of Railway Mail Service. Thereafter, on October 24, the chief clerk and other railway-mail officials took the 167 pouches in auto mail trucks from the subtreasury to the Grand Central Station, New York, N. Y., where they were placed in postal car of Boston, Springfield and New York R. P. O. car attached to one of plaintiff's regular passenger trains, train No. 50, in which they were transported to Springfield, Mass., over the New York, New Haven & Hartford railroad, the plaintiff above named, and upon postal routes Nos. 106004 and 106005, mentioned in the petition, and thence to Boston, Mass., over the Boston & Albany Railroad (New York Central & Hudson River Railroad Co., lessee), accompanied by seven officials of the Railway Mail Service; all persons accompanying the same having and holding the requisite travel commissions from the Postmaster General for

transportation over the said railroads between New York and Boston, as prescribed by the Postal Laws and Regulations.

XI.

No protest was made by any carrier and the claimant was paid the amount fixed by the readjustment orders for carrying the mails over its route, and received such payment without protest. Neither the Pennsylvania Railroad Company nor the Boston & Albany Railroad have made any claim against the Government for additional compensation growing out of the transportation aforesaid.

XII.

The express rate, as shown by the Official Express Classification No. 22, effective February 1, 1914, on file in the Interstate Commerce Commission, was $1 for each $1,000 of gold coin transported between New York and Springfield at all times stated in plaintiff's petition.

The regular first-class passenger rate between the points stated above was $2.95 per passenger during all the time covered by the petition.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed. (See New York, New Haven & Hartford R. R. Co. v. United States, 53 C. Cls., 222; 251 U. S., 123; Mail Divisor Cases, 53 C. Cls., 258, 251, 326.)

15 VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Fourteenth day of June, A. D. 1920, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge and decree that the plaintiff herein is not entitled to recover any sum in this action of and from the United States; and that the petition herein be and it hereby is dismissed.

By THE COURT.

VII. *Claimant's Application for and Allowance of an Appeal.*

From the judgment rendered in the above-entitled cause on the 14th day of June, 1920, in favor of the defendants, the claimant, by its attorney on the 22nd day of June, 1920, makes application for, and give- notice of, an appeal to the Supreme Court of the United States.

S. S. ASHBAUGH,
Attorney for Claimant.

Filed June 22, 1920.

Ordered: That the above appeal be allowed as prayed for.

By THE COURT.

June 28, 1920.

16 Court of Claims.

No. 33081.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing is a true copy of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law; of the judgment of the court; of the claimant's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City this Twenty-eighth day of June, A. D. 1920.

[Seal of Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 27,784. Court of Claims. Term No. 427. The New York, New Haven & Hartford Railroad Company, appellant, vs. The United States. Filed June 29th, 1920. File No. 27,784.